

BILL BRADBURY
SECRETARY OF STATE



ELECTIONS DIVISION
JOHN LINDBACK
DIRECTOR
141 STATE CAPITOL
SALEM, OREGON 97310-0722
ELECTIONS—(503) 986-1518

BEFORE THE SECRETARY OF STATE
OF THE
STATE OF OREGON

In the matter of a Late Contribution and Expenditure Report) Final Order
by the Committee to Elect Bernice Barnett, Bernice Barnett,)
Candidate, Eileen Wilkinson, Treasurer, for the Second) Case No. L7726
Pre-Election for the May 18, 2004, Primary Election)

August 4, 2004

Committee to Elect Bernice Barnett (003491)
Bernice Barnett, Candidate / Eileen Wilkinson, Treasurer
PO Box 441
Depoe Bay, OR 97341-0441

Dear Ms. Barnett:

This is a Final Order issued by the Secretary of State (secretary) for your failure to file a timely second pre-election contribution and expenditure report for the May 18, 2004, Primary Election.

On June 10, 2004, the secretary notified the Committee to Elect Bernice Barnett (committee), pursuant to ORS 260.232(2), that it had failed to file the report and that the secretary may impose a civil penalty. An opportunity for a hearing was provided in that notice. The committee submitted written testimony in the form of a notarized statement in lieu of a personal appearance at a public hearing. Accordingly, after consideration of the applicable law and evidence presented, Jennifer Hertel, Hearings Officer with the Elections Division, is entering the following Order.

FINDINGS OF FACT

1. The committee's Statement of Organization (SEL 220), applicable during the reporting period, was filed with the secretary on December 10, 2003. The statement reported Eileen Wilkinson as the treasurer and PO Box 441, Depoe Bay, OR 97341-0441 as the mailing address for both candidate and committee correspondence.
2. The committee was required to file a second pre-election report with the secretary on May 6, 2004.
3. The secretary received the report on May 7, 2004, which is one business day after the date on which the report was due.

4. The committee reported total contributions of \$1,150.82 and total expenditures of \$1,378.74 during the accounting period for the report.
5. On June 10, 2004, the secretary sent the committee a Notice of Proposed Civil Penalty. The notice was sent by both certified and first class mail to the candidate and was sent by first class mail to the treasurer at the above-referenced address. The notice proposed a civil penalty of \$13.79 and allowed the committee 20 days to request a hearing. The notice sent by certified mail was received and signed for by Ted Herford on June 17, 2004.
6. On June 18, 2004, the secretary received a notarized letter from Eileen K. Wilkinson in lieu of a public hearing.
7. The letter—attached as Exhibit A—was reviewed, considered, and made part of the record.
8. The secretary has record of no previous late filings during the two-year period beginning September 15, 2003.

ULTIMATE FINDINGS OF FACT

Bernice Barnett, Candidate, and Eileen Wilkinson, Treasurer, failed to file a timely second pre-election contribution and expenditure report for the May 18, 2004, Primary Election.

CONCLUSIONS OF LAW

Candidate Bernice Barnett's and Treasurer Eileen Wilkinson's failure to file a timely second pre-election contribution and expenditure report for the May 18, 2004, Primary Election violated ORS 260.058.

OPINION

The Committee to Elect Bernice Barnett's second pre-election contribution and expenditure report, filed on May 7, 2004, was late. It was due by 5:00 p.m., May 6, 2004.

By statute, a maximum \$10,000 civil penalty may be imposed for this violation. The *2004 Campaign Finance Manual*, which contains a penalty calculation matrix on pages 101 and 102, is designated in OAR 165-012-0005 as the procedure manual for Oregon campaign finance regulations.

After reviewing and considering the evidence and information on file in this office, the hearings officer finds that there has been a violation of Oregon election law. The explanation provided in the notarized testimony adequately mitigates the failure to file a report by the deadline. The testimony explains that Ms. Wilkinson personally mailed the report via Express overnight delivery on May 5, 2004, at the post office in Lincoln City. Along with the notarized testimony is a receipt showing purchase of the overnight service and proof of delivery in Salem. As guaranteed, the report was delivered in Salem on May 6, 2004, and was signed for by Mechelle Nieuwendorp at the Department of Administrative Services. However, it was not

received in the office of the Elections Division for processing until May 7, 2004, which is why it was recorded as one day late.

A reduction or waiver of the penalty will be considered only if one of five clearly defined mitigating circumstances is present. These mitigating circumstances are defined on page 97 of the *2004 Campaign Finance Manual* and in the proposed penalty notice. The burden rests with the party requesting the waiver of the proposed civil penalty to demonstrate that one of the listed circumstances applies and caused the lateness of insufficiency of the report. One of these circumstances is "the direct result of failure of a professional delivery service to deliver documents in the time guaranteed for delivery by written receipt of the service provider..."

ORDER

The lateness was the direct result of failure of a professional delivery service to deliver documents in the time guaranteed for delivery by written receipt of the service provider. Therefore, no penalty will be assessed for this violation.

RIGHT TO JUDICIAL REVIEW

You have the right to appeal this Order to the Oregon Court of Appeals pursuant to ORS 183.482. To appeal you must file a petition for judicial review with the Court of Appeals within 60 days from the day this Order was served to you. Because this Order was mailed to you, the date of service is the day it was *mailed*, not the day you received it. If you do not file a petition for judicial review within the 60-day time period, you will lose your right to appeal.

Jennifer Hertel, Compliance Specialist

DATE of Service: _____

c: Eileen Wilkinson, Treasurer
PO Box 441
Depoe Bay, OR 97341-0441